

SENATE BILL 829

J1, Q4

11r2748
CF HB 716

By: **Senators Ferguson and Pinsky**

Introduced and read first time: February 11, 2011

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Health – Maryland Combating Childhood Obesity Grant Program**

3 FOR the purpose of establishing the Maryland Combating Childhood Obesity Grant
4 Program; specifying the purpose of the Program; requiring an organization or a
5 public school meet certain eligibility requirements for participation in the
6 Program; specifying that a grant from the program may be used for certain
7 purposes; prohibiting a program grant from being used for certain purposes;
8 requiring an organization or a public school that receives a grant from the
9 program to submit certain reports to the Secretary of Health and Mental
10 Hygiene at certain times; requiring the Secretary to adopt certain regulations;
11 establishing the Maryland Combating Childhood Obesity Fund; specifying the
12 purpose of the Fund; requiring the Secretary to administer the Fund; specifying
13 that the Fund is a special, nonlapsing fund that is not subject to a certain
14 provision of law; requiring the State Treasurer to hold the Fund separately;
15 requiring the Comptroller to account for the Fund; specifying that the Fund
16 consists of certain revenue, certain investment earnings, and certain other
17 money; specifying that the Fund may be used only for certain purposes;
18 requiring the State Treasurer to invest money in the Fund in a certain manner;
19 requiring that investment earnings of the Fund be credited to the Fund;
20 specifying that expenditures from the Fund may be made only in accordance
21 with the State budget; specifying that a certain exemption from the sales and
22 use tax does not apply to snack food; repealing a certain exemption from the
23 sales and use tax; requiring the Comptroller to distribute the sales and use tax
24 revenue collected from the sale of snack food in a certain manner; requiring a
25 sales and use tax return to include certain information; providing for the
26 termination of this Act; defining certain terms; and generally relating to the
27 Maryland Combating Childhood Obesity Grant Program.

28 BY adding to

29 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 13–3001 through 13–3003 to be under the new subtitle “Subtitle 30.
Maryland Combating Childhood Obesity Grant Program”
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 2–1302.2, 11–206, and 11–502
Annotated Code of Maryland
(2010 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

**SUBTITLE 30. MARYLAND COMBATING CHILDHOOD OBESITY GRANT
PROGRAM.**

13–3001.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(B) “FUND” MEANS THE MARYLAND COMBATING CHILDHOOD OBESITY
FUND.

(C) “ORGANIZATION” MEANS A NONPROFIT ORGANIZATION THAT IS
EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE
CODE.

(D) “PROGRAM” MEANS THE MARYLAND COMBATING CHILDHOOD
OBESITY GRANT PROGRAM.

13–3002.

(A) THERE IS A MARYLAND COMBATING CHILDHOOD OBESITY GRANT
PROGRAM.

(B) THE PURPOSE OF THE PROGRAM IS TO PROVIDE GRANTS TO
ORGANIZATIONS AND PUBLIC SCHOOLS THAT SERVE CHILDREN ENROLLED IN
KINDERGARTEN THROUGH GRADE 8, IN A PUBLIC SCHOOL, THAT PROVIDE
PHYSICAL ACTIVITIES DURING SCHOOL, AFTER SCHOOL, AND SUMMER
VACATION.

1 **(C) TO BE ELIGIBLE FOR A GRANT FROM THE PROGRAM, AN**
2 **ORGANIZATION OR A PUBLIC SCHOOL SHALL:**

3 **(1) APPLY THE BEST PRACTICES FOR THE OPERATION OF**
4 **OUT-OF-SCHOOL PROGRAMS FROM THE MARYLAND OUT-OF-SCHOOL TIME**
5 **PROGRAMS' QUALITY STANDARDS FRAMEWORK AS ESTABLISHED BY THE**
6 **MARYLAND OUT-OF-SCHOOL TIME NETWORK;**

7 **(2) SERVE CHILDREN ENROLLED IN KINDERGARTEN THROUGH**
8 **GRADE 8 IN A PUBLIC SCHOOL; AND**

9 **(3) OFFER PUBLIC SCHOOL CHILDREN REGULAR, HIGH QUALITY**
10 **OPPORTUNITIES TO BE PHYSICALLY ACTIVE, INCLUDING INTRAMURAL SPORTS**
11 **AND ORGANIZED PLAY.**

12 **(D) (1) A GRANT FROM THE PROGRAM MAY BE USED TO:**

13 **(I) OFFER NUTRITION EDUCATION, INCLUDING EDUCATION**
14 **IN THE CULINARY ARTS; AND**

15 **(II) PROVIDE HEALTHY SNACKS AND MEALS.**

16 **(2) A GRANT FROM THE PROGRAM MAY NOT BE USED TO**
17 **PROVIDE ACTIVITIES THAT ARE OFFERED:**

18 **(I) BY A PUBLIC SCHOOL AS PART OF, OR IN LIEU OF, THE**
19 **PUBLIC SCHOOL'S REQUIRED PHYSICAL EDUCATION PROGRAM; OR**

20 **(II) AT A PUBLIC SCHOOL THAT IS OPEN TO CHILDREN WHO**
21 **ARE ENROLLED IN A PRIVATE SCHOOL OR WHO ARE HOMESCHOOLED.**

22 **(E) (1) AN ORGANIZATION OR A PUBLIC SCHOOL THAT RECEIVES A**
23 **GRANT FROM THE PROGRAM SHALL SUBMIT INTERIM AND FINAL REPORTS TO**
24 **THE SECRETARY THAT INCLUDE:**

25 **(I) THE NUMBER OF PUBLIC SCHOOL CHILDREN ENROLLED**
26 **IN THE GRANT-FUNDED ACTIVITIES;**

27 **(II) THE NUMBER OF PUBLIC SCHOOL CHILDREN WHO**
28 **ATTENDED ANY GRANT-FUNDED ACTIVITIES;**

29 **(III) INFORMATION REGARDING WHETHER THE**
30 **PARTICIPATION IN THE GRANT-FUNDED ACTIVITIES HAS AFFECTED THE**
31 **SCHOOL ATTENDANCE OF THE PARTICIPATING CHILDREN;**

(IV) DATA FROM SURVEYS COMPLETED BY THE PARTICIPATING CHILDREN AT THE BEGINNING AND END OF THE GRANT-FUNDED ACTIVITIES; AND

(v) DOCUMENTATION OF THE SPECIFIC ACTIVITIES THAT WERE FUNDED THROUGH THE GRANT AND THE SKILLS GAINED BY THE PUBLIC SCHOOL CHILDREN THROUGH PARTICIPATION IN THE ACTIVITIES.

(2) THE INTERIM REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUBMITTED NO LATER THAN HALFWAY THROUGH THE GRANT PERIOD.

(3) THE FINAL REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUBMITTED WITHIN 30 DAYS AFTER THE GRANT PERIOD ENDS.

(F) THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THE PROGRAM.

13-3003.

(A) THERE IS A MARYLAND COMBATING CHILDHOOD OBESITY FUND.

(B) THE PURPOSE OF THE FUND IS TO FUND THE MARYLAND COMBATING CHILDHOOD OBESITY GRANT PROGRAM.

(C) THE SECRETARY SHALL ADMINISTER THE FUND.

(D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(E) THE FUND CONSISTS OF:

**(1) REVENUE DISTRIBUTED TO THE FUND UNDER § 2-1302.2(A)
OF THE TAX – GENERAL ARTICLE;**

(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND:

(3) INVESTMENT EARNINGS OF THE FUND; AND

1 (4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED
2 FOR THE BENEFIT OF THE FUND.

3 (F) (1) THE FUND MAY BE USED ONLY AS PROVIDED IN THIS
4 SUBSECTION.

5 (2) (I) THE DEPARTMENT SHALL USE 2.5% OF THE FUND EACH
6 YEAR FOR THE COSTS OF ADMINISTERING THE PROGRAM.

7 (II) THE DEPARTMENT MAY USE ADMINISTRATIVE FUNDS
8 TO PROVIDE:

9 1. TECHNICAL ASSISTANCE; AND

10 2. PROFESSIONAL DEVELOPMENT AND TRAINING
11 OPPORTUNITIES TO THE EMPLOYEES OF ORGANIZATIONS AND PUBLIC SCHOOLS
12 THAT RECEIVE GRANTS FROM THE PROGRAM.

13 (3) THE BALANCE OF THE FUND SHALL BE USED TO AWARD
14 GRANTS FROM THE PROGRAM.

15 (G) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE
16 FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

17 (2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE
18 CREDITED TO THE FUND.

19 (H) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN
20 ACCORDANCE WITH THE STATE BUDGET.

21 Article – Tax – General

22 2–1302.2.

23 (A) AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2–1301
24 THROUGH 2–1302.1 OF THIS SUBTITLE, THE COMPTROLLER QUARTERLY SHALL
25 DISTRIBUTE 40% OF THE SALES AND USE TAX REVENUE ATTRIBUTABLE TO THE
26 SALE OF SNACK FOOD TO THE MARYLAND COMBATING CHILDHOOD OBESITY
27 FUND ESTABLISHED UNDER § 13–3003 OF THE HEALTH – GENERAL ARTICLE.

28 (B) After making the distributions required under §§ 2–1301 through
29 2–1302.1 of this subtitle AND SUBSECTION (A) OF THIS SECTION, the Comptroller
30 shall pay into the Transportation Trust Fund established under § 3–216 of the
31 Transportation Article:

(1) for each fiscal year beginning before July 1, 2013, 5.3% of the remaining sales and use tax revenue; and

(2) for each fiscal year beginning on or after July 1, 2013, 6.5% of the remaining sales and use tax revenue.

11–206.

(a) (1) In this section the following words have the meanings indicated.

(2) “Food for immediate consumption” means:

(i) food obtained from a salad, soup, or dessert bar;

(ii) party platters;

(iii) heated food;

(iv) sandwiches suitable for immediate consumption; or

(v) ice cream, frozen yogurt, and other frozen desserts, sold in containers of less than 1 pint.

(3) “Facility for food consumption” does not include parking spaces for vehicles as the sole accommodation.

(4) (i) “Food” means food for human consumption.

(ii) “Food” includes the following foods and their products:

1. beverages, including coffee, coffee substitutes, cocoa, fruit juices, and tea;

2. condiments;

3. eggs;

4. fish, meat, and poultry;

5. fruit, grain, and vegetables;

6. milk, including ice cream; and

7. sugar.

(iii) “Food” does not include:

1 1. an alcoholic beverage as defined in § 5–101 of this
2 article;

3 2. a soft drink or carbonated beverage; or

4 3. candy or confectionery.

5 (5) “Premises” includes any building, grounds, parking lot, or other
6 area that:

7 (i) a food vendor owns or controls; or

8 (ii) another person makes available primarily for the use of the
9 patrons of 1 or more food vendors.

10 (6) “SNACK FOOD” MEANS:

11 (I) POTATO CHIPS AND STICKS;

12 (II) CORN CHIPS;

13 (III) PRETZELS;

14 (IV) CHEESE PUFFS AND CURLS;

15 (V) PORK RINDS;

16 (VI) EXTRUDED PRETZELS AND CHIPS;

17 (VII) POPPED POPCORN;

18 (VIII) NUTS AND EDIBLE SEEDS; OR

19 (IX) SNACK MIXTURES THAT CONTAIN ANY ONE OR MORE OF
20 THE FOODS LISTED IN ITEMS (I) THROUGH (VIII) OF THIS PARAGRAPH.

21 [(6)] (7) “Substantial grocery or market business” means a business
22 at which at least 10% of all sales of food are sales of grocery or market food items, not
23 including food normally consumed on the premises even though it is packaged to carry
24 out.

25 (b) The sales and use tax does not apply to a sale of food stamp eligible food,
26 as defined in 7 U.S.C. § 2012, bought with a food coupon issued in accordance with 7
27 U.S.C. § 2016.

1 (c) (1) Except as provided in paragraph (2) of this subsection, the sales
2 and use tax does not apply to a sale of food for consumption off the premises by a food
3 vendor who operates a substantial grocery or market business at the same location
4 where the food is sold.

5 (2) The exemption under paragraph (1) of this subsection does not
6 apply to:

7 (i) food that the vendor serves for consumption on the premises
8 of the buyer or of a third party; [or]

9 (ii) food for immediate consumption; **OR**

10 **(III) SNACK FOOD.**

11 (d) The sales and use tax does not apply to:

12 (1) a sale of food:

13 (i) to patients in a hospital when the food charge is included in
14 the regular room rate;

15 (ii) by a church or religious organization;

16 (iii) by a school other than an institution of postsecondary
17 education, including sales at a school by a food concessionaire that is under contract
18 with the school or with its designated contract agent, but not including sales at events
19 that are not sponsored by the school or are not educationally related;

20 (iv) to students at an institution of postsecondary education if
21 the food charge is for a meal plan or is included in the regular charge for room and
22 board; or

23 (v) by a nonprofit food vendor if there are no facilities for food
24 consumption on the premises, unless the food is sold within an enclosure for which a
25 charge is made for admission;

26 (2) if the proceeds of the sale are used to support a bona fide
27 nationally organized and recognized organization of veterans of the armed forces of the
28 United States or auxiliary of the organization or 1 of its units, a sale of food or meals
29 for consumption only on the premises, served by the organization or auxiliary; or

30 (3) if the proceeds of the sale are used to support a volunteer fire
31 company or department or its auxiliary or a volunteer ambulance company or rescue
32 squad or its auxiliary, a sale of food served by the company, department, squad, or
33 auxiliary.

1 (e) The sales and use tax does not apply to a sale of food or any beverage in a
2 vehicle that is being operated in the State while in the course of interstate commerce.

3 (f) The sales and use tax does not apply to a sale for consumption off the
4 premises of:

5 (1) crabs; or

6 (2) seafood that is not prepared for immediate consumption.

7 [(g) (1) In this subsection, “snack food” means:

8 (i) potato chips and sticks;

9 (ii) corn chips;

10 (iii) pretzels;

11 (iv) cheese puffs and curls;

12 (v) pork rinds;

13 (vi) extruded pretzels and chips;

14 (vii) popped popcorn;

15 (viii) nuts and edible seeds; or

16 (ix) snack mixtures that contain any one or more of the foods
17 listed in items (i) through (viii) of this paragraph.

18 (2) The sales and use tax does not apply to the sale of snack food
19 through a vending machine.]

20 [(h)] (G) The sales and use tax does not apply to the sale through a vending
21 machine of milk, fresh fruit, fresh vegetables, or yogurt.

22 11–502.

23 (a) Each vendor shall complete, under oath, and file with the Comptroller a
24 sales and use tax return:

25 (1) on or before the 20th day of the month that follows the month in
26 which the vendor makes any retail sale or sale for use; and

(2) for other periods and on other dates that the Comptroller specifies by regulation, including periods in which the vendor does not make any retail sale or sale for use.

(b) A return shall state, for the period that the return covers:

(1) for a vendor making a retail sale in the State:

(i) the gross proceeds of the business of the vendor;

(ii) the taxable price of sales on which the sales and use tax is computed; [and]

(III) THE AMOUNT OF SALES AND USE TAX THAT THE VENDOR COLLECTED FROM THE SALE OF SNACK FOOD; AND

~~[(iii)]~~ **(IV)** the sales and use tax due; and

(2) for a vendor making a sale for use:

(i) the total value of the tangible personal property or taxable service the use of which became subject to the sales and use tax; and

(ii) the sales and use tax due.

(c) If the Comptroller approves, a vendor engaging in more than 1 business in which the vendor makes retail sales or sales for use may file a consolidated return covering the activities of the businesses.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011. It shall remain effective for a period of 5 years and, at the end of June 30, 2016, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.